

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PEDRO RAMOS, A27-684-493

Petitioner,

v.

ORDER
07-CV-858

MICHAEL CHERTOFF, et al.

Respondents.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). On December 28, 2007, petitioner filed a petition for a writ of habeas corpus. On October 14, 2008, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that the petition be denied.

Petitioner filed objections to the Report and Recommendation on October 24, 2008. The respondents filed a response thereto. Petitioner filed a reply to the response. Oral argument on the objections was held on May 28, 2009.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and

Recommendation. In addition to the reasons stated in the Report and Recommendation, the Court is denying the petition without prejudice based on the parties' supplemental filings of May 28, June 1, and June 2, 2009. Two additional points are apparent from those filings that further justify continued detention at this time. First, petitioner's family appears to have communicated with the Consulate of the Dominican Republic recently. The communication appears to have induced a delay in the completion of the travel documents necessary to remove petitioner. It is unclear why petitioner would interfere with the issuance of travel documents and thus further "conspire[] or act[] to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). This adds further support to Magistrate Judge McCarthy's conclusion that petitioner's lengthy period of detention is due largely to his own conduct. That said, the government's submissions suggest that final removal can occur as early a month after the issuance of this Order. Denial without prejudice ensures that petitioner can revisit the issue of his detention should removal within a month not occur.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, petitioner's petition for a writ of habeas corpus is denied. In addition to the reasons stated in the Report and Recommendation, the Court is denying the petition without prejudice based on the government's supplemental filing of May 28, 2009. In that filing, the government represented to

the Court that the paperwork necessary to complete petitioner's removal likely will be ready within a month. Denial without prejudice ensures that petitioner can revisit the issue of his detention should removal within a month not occur.

The Clerk of Court is hereby ordered to take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: June 2 , 2009